IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 14691 of 2007(Y)

PETITIONER:

K. ALEYAMMA VARGHESE,
OLIYIL HOUSE, VETTIKKAL P.O., MULANTHURUTHY VIA.,
ERNAKULAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
ERNAKULAM.

4. THE ASSISTANT EDUCATIONAL OFFICER,
TRIPUNITHURA, ERNAKULAM DISTRICT.

5. THE MANAGER,
ST. THOMAS L.P.SCHOOL VETTIKKAL,
MULANTHURUTHY VIA., ERNAKULAM DISTRICT.

6. REV. DR.ADAI JACOB,
MALANKARA SYRIAN ORTHODOX THEOLOGICAL SEMINARY,
UDAYAGIRI.

BY GOVERNMENT PLEADER SRI.A.J.VARGHESE.
SRI.ABRAHAM VAKKANAL
SRI.PAUL ABRAHAM VAKKANAL
SRI.BIJIMON C.CHERIAN
SRI.ARUL KUMAR.P
SRI.LOWEL CHERIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.14691/2007)

EXT.P1: TRUE COPY OF STAFF MANAGEMENT BYE-LAW.

EXT.P2: TRUE COPY OF AFFIDAVIT DT. 22/2/2007.

EXT.P3: TRUE COPY OF COMMUNICATION DT. 3/2/2007.

EXT.P4: TRUE COPY OF LETTER DT. 19/11/1992.

EXT.P5: TRUE COPY OF WRITTEN STATEMENT DT. 24/8/2005.

EXT.P6: TRUE COPY OF ORDER DT. 28/10/2005.

EXT.P7: TRUE COPY OF ORDER DT. 10./11/2006.

EXT.P8: TRUE COPY OF JUDGMENT IN WP.33206/06 DT. 24/1/2007.

EXT.P9: TRUE COPY OF ARGUMENT NOTE

EXT.P10: TRUE COPY OF GOVT. ORDER DT. 29/3/2007.

RESPONDENTS' EXHIBITS:

EXT.R6(A): TRUE COPY OF PROCEEDINGS DT. 17/3/73.

EXT.R6(B): TRUE COPY OF DECISIN DT. 18/4/2007.

EXT.R6(C): TRUE COPY OF ENDORSEMENT DT. 18/4/2007.

EXT.R6(D): TRUE COPY OF DECISIN OF EXECUTIVE COMMITTEE.

EXT.R6(E): TRUE COPY FO RULE DT. 21/4/2007.

EXT.R6(F): TRUE COPY OF LETTER DT. 23/4/2007.

EXT.R6(G): TRUE COPY FO LETTER DT. 21/4/2007.

EXT.R6(H): TRUE COPY OF LETTER FROM R6 DT. 23/4/2007.

A.K. Basheer, J.

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W.P(C) No. 14691 of 2007

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Dated this the 6th day of July, 2007.

J U D G M E N T

Does a former teacher in a staff managed school retain any manner of right, either in management or in ownership of the school, after her retirement from service?

2. The above question has cropped up in this writ petition, which is at the instance of a teacher who retired from service about 2 decades back. She challenges Ext.P10 order issued by the Government granting permission for transfer of management of a Lower Primary School in favour of respondent No.6, subject to the conditions laid down in Rule 5A and 5A(3) of Chapter III Kerala Education Rules.

3. St.Thomas Lower Primary School, Vettikkal was established way back in the year 1912. It appears that in the year 1958, the then Manager found it difficult to run the school. Therefore the members of the staff were requested to take over the management. According to the petitioner, she was a member of the staff and she had also contributed a sum of Rs.400/- towards the share in the management, as the other three teachers did. She retired from service in the year 1987. She had not transferred her share to the successor appointee though it was permissible under the bye-laws. According to her, she retained her share even after her retirement and thus she continues to hold that right even today. She therefore contends that the so called decision taken by the present team of staff members to transfer the management of the

school to Malankara Syrian Orthodox Theological Seminary, Udayagiri at Vettikkal (respondent No.6), without her junction and consent is totally unsustainable. It is also contended by her that a similar request for transfer made by respondent No.6 in the year 1992 had been rejected.

4. In the counter affidavit it is contended by respondents 5 and 6 that the management of the school had already been taken over by respondent No.5 on April 18, 2007 pursuant to Ext.P10 order issued by the Government. But the appointment of respondent No.5 as Manager has not been approved by the Department in view of the interim order passed by this Court in this writ petition. It is further contended that the petitioner who had ceased to be a member of the staff long time ago, does not have any subsisting right either in the management or in the property of the school. Her right, if any, is confined to return of Rs.400/- allegedly paid by her as contribution to the staff Committee at the time when she was working in the school. The earlier application submitted for transfer of management was not rejected by the Government as alleged by the petitioner. The application was in fact returned by the Director of Pubic Instruction to the District Educational Officer for re-transmission after obtaining counter signature from the staff. The above fact is clearly revealed from Ext.P3. It is further contended by respondents 5 and 6 that the entire members of the staff of the school had unanimously given their consent for transfer of management.

5. Petitioner had admittedly contributed a sum of Rs.400/- as her share. Referring to the clauses contained in Ext.P1 it is admitted by the

petitioner that the amount contributed by a member of the staff is liable to be returned to him/her when he/she retires or resigns from the service or it can be transferred to the teacher who joins the school in the resultant vacancy. It is the case of the petitioner that the sum of Rs.400/- paid by her had not been refunded to her, nor had she transferred her share to anyone else. Thus she is still retaining her share in the management and property of the school. It is in this context that it is contended by the petitioner that any request for transfer of management could have been allowed only if she had also given her consent.

6. I am afraid the above contention is wholly untenable. The very concept of "staff management" envisages or connotes management of the affairs of the school by the members of the staff. The moment a member of the staff of such a school retires from service or if he ceases to be a member of the staff for whatever reason, his right in the management of the school comes to an end. In the case on hand, the only right that survives in favour of the petitioner is her right to get back the sum of Rs.400/-. Nothing more, nothing less. If the petitioner assumes that she has got a subsisting right in the property of the school, necessarily, she will have to establish it before a competent civil court.

7. Learned counsel for the petitioner vehemently contends that the members of the staff in question do not own the school and therefore they cannot alienate or transfer the ownership of the school to anyone else. But in paragraph 1 of the writ petition, the petitioner has admitted that the management as well as ownership were entrusted by the then Manager to the members of the staff in the year 1958. If that

be the position, it cannot stand to reason as to how the petitioner can now turn round and say that the ownership had not vested in the members of the staff.

8. Admittedly the sum of Rs.400/= paid by the petitioner was towards her share in the management. The said payment was in terms of clause 2 of Ext.P1. Petitioner has not produced any document to show that she has got any other manner of right, be it in the management or property of the school, other than the alleged payment of Rs.400/= contributed by her to the managing committee of the school. Her right in the management of the affairs of the school ceased the moment she ceased to be a member of the staff of the school. In that view of the matter, the objection now raised by the petitioner against the order passed by the Government for transfer of management in favour of respondent No.6 cannot be sustained at all. As mentioned earlier, the right of a teacher of a staff managed school begins when he is admitted as a staff member. It will end when he ceases to be a member . The payment of share value or contribution, if any, is only in recognition of his membership in the managing committee. No member acquires a perpetual right either in the management or in the property of a staff managed school. The contention raised by the petitioner that she is a shareholder in the management is totally misconceived. In that view of the matter, the objection raised by the petitioner against the order passed by the Government granting permission to transfer management of the school in favour of respondent No.6 is liable to be repelled. I do so.

9. In this context learned counsel for respondents 5 and 6 has

invited my attention to a decision of this Court in **Ganapathy Nair v. State of Kerala (ILR 1981 (1) Kerala 714)**. While dealing with an almost identical issue, this Court held that the management of a staff managed school vests in the staff and not in anybody else. Nobody other than the staff can have any managerial or proprietary right.

10. Having regard to the entire facts and circumstances I do not find any reason to interfere with Ext.P10 order passed by the Government. However it is made clear that Ext.P10 will not trammel the subsisting civil rights, if any, of the petitioner which she will be entitled to establish before a competent civil court, if so advised.

Writ Petition is dismissed.

A.K. Basheer
Judge.

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